STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
June 18, 2013

In the Matter of D.A. RUSHIN, Minor.

No. 312970
Kalamazoo Circuit Court
Family Division
LC No. 2011-000093-NA

Before: MURPHY, C.J., and FITZGERALD and HOEKSTRA, JJ.

PER CURIAM.

Respondent-mother appeals as of right the order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(ii), (g), and (j). We affirm.

On March 18, 2011, petitioner filed a petition to remove the child because approximately two days after she was born, she tested positive for methamphetamines. After a brief return to respondent-mother, the child was removed again after a report of domestic violence between respondent-mother and the child's father in the presence of the child, along with a report that respondent-mother had cared for the child while intoxicated and had left the child unattended in the rain at a picnic table at a McDonald's restaurant for approximately one hour. The trial court subsequently entered an order of adjudication, finding that there were statutory grounds to exercise jurisdiction over the child after respondent-mother entered a plea admitting to allegations of substance abuse. The trial court ordered respondent-mother to comply with the provisions contained in the Parent-Agency Treatment Plan (PATP).

In January of 2012, respondent-mother tested positive for cocaine use. Additionally, on January 23, 2012, respondent-mother was arrested for uttering and publishing and obstructing by disguise. During her incarceration, officials found that respondent-mother was hoarding medication that had been prescribed for her bipolar disorder; the medication was discontinued after this incident. After her release from the county jail, respondent-mother admitted to methamphetamine use. She also tested positive for amphetamines, methamphetamines, and THC on the second day of the termination proceedings.

Respondent-mother first argues that the trial court clearly erred when it found statutory grounds for termination. "In a termination of parental rights proceeding, a trial court must find by clear and convincing evidence that one or more grounds for termination exist and that termination is in the child's best interests." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009); see also MCL 712A.19b(3). An appellate court "review[s] for clear error both the [trial] court's decision that a ground for termination has been proven by clear and convincing evidence

and . . . the [trial] court's decision regarding the child's best interest." *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); see also MCR 3.977(K). The trial court's termination decision "is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

Turning first to the trial court's finding regarding MCL 712A.19b(3)(g), we hold that the trial court did not clearly err by concluding that § 19b(3)(g) was established by clear and convincing evidence. Under § 19b(3)(g), termination is warranted if there is clear and convincing evidence that "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." Here, there was clear and convincing evidence that respondent-mother failed to provide proper care and custody for the minor child, and that she would be unable to do so within a reasonable time. Respondent-mother struggled with substance abuse throughout the proceedings, and she even tested positive for illegal substances on the second day of the termination hearing. This positive test came approximately two months after an express warning from the trial court that her parental rights would be terminated if she did not demonstrate compliance with the PATP. A respondent's persistent struggles with substance abuse can support termination under § 19b(3)(g). *In re Conley*, 216 Mich App 41, 44; 549 NW2d 353 (1996). Moreover, respondent-mother was diagnosed with bipolar disorder, and she repeatedly failed to address this condition through counseling and medication, despite being ordered to do so. The trial court did not clearly err when it found that termination was warranted under § 19b(3)(g).

Respondent-mother disagrees, and argues that she complied with the PATP and that her compliance therewith was evidence of her ability to provide proper care and custody. Although compliance with court-ordered services can demonstrate a parent's ability to provide proper care and custody, see *In re JK*, 468 Mich at 214, respondent-mother overstates her compliance with the PATP in the case at bar. Indeed, although respondent-mother complied with some parts of the PATP, such as completing a substance abuse assessment, participating in some therapy sessions, and completing a parenting class, she failed to participate in a majority of the services offered to her. For instance, she failed to complete counseling or therapy for her substance abuse and mental health issues, and she repeatedly used illegal substances. She also repeatedly failed to take prescription medication for her bipolar disorder. Moreover, the record reveals that to the extent respondent-mother complied with services, she failed to benefit from those services, as her substance abuse and mental health issues persisted throughout this case. "[I]t it is not enough to merely go through the motions; a parent must benefit from the services offered so that he or she can improve parenting skills to the point where the children would no longer be at risk in the parent's custody." *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005), superseded in part on other grounds by statute as stated in *In re Hansen*, 285 Mich App 158, 163; 774 NW2d 698 (2009), vacated on other grounds 486 Mich 1037 (2010).

Next, respondent-mother argues that she should have been given more time to benefit from services, given her compliance with the PATP. Again, respondent-mother overstates her compliance with the PATP. Additionally, to the extent she complied, she failed to benefit. Thus, we find that the 18 months given to respondent-mother to demonstrate her ability to comply with and benefit from services was sufficient.

"Having concluded that at least one ground for termination existed, we need not consider the additional grounds upon which the trial court based its decision." *In re HRC*, 286 Mich App at 461. However, we also find that the trial court did not clearly err when it found clear and convincing evidence in support of termination under §§ 19b(3)(c)(ii) and (j).[1]

Respondent-mother next argues that the trial court was predisposed to finding statutory grounds for termination because it harbored bias against her. The issue is unpreserved and we review for plain error. *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011). Disqualification is warranted when a "judge is biased or prejudiced . . . against a party[.]" MCR 2.003(C)(1)(a). "A trial judge is presumed to be impartial and the party who asserts partiality has a heavy burden of overcoming that presumption." *In re MKK*, 286 Mich App 546, 566; 781 NW2d 132 (2009). Disqualification is unwarranted absent a showing of bias or prejudice that is both personal and extrajudicial. *Cain v Dep't of Corrections*, 451 Mich 470, 495; 548 NW2d 210 (1996). "Further, a trial judge's remarks made during trial, which are critical of or hostile to counsel, the parties, or their cases, ordinarily do not establish disqualifying bias." *In re MKK*, 286 Mich App at 567. Respondent-mother fails to overcome the presumption of impartiality. The trial court's remarks at the termination hearing were neither hostile nor critical of respondent-mother. Rather, the trial court acknowledged the unfortunate reality that its termination decision was, based on the evidence, not difficult. The trial court also acknowledged that this case was unfortunate. Respondent-mother cannot demonstrate a deep-seated personal and extrajudicial bias because of the trial court's remarks. See *Cain*, 451 Mich at 495-496; see also *In re MKK*, 286 Mich App at 567 (the trial court's remarks ordinarily do not establish disqualifying bias). There was no plain error.

Next, respondent-mother argues that petitioner failed to provide her with reasonable efforts to rectify the conditions that led to the child's removal, particularly in the area of her mental health issues. Generally, when a child is removed from a parent's custody, petitioner is required to make reasonable efforts to reunify a parent with his or her child, unless there are aggravated circumstances, none of which are present in this case. *In re HRC*, 286 Mich App at 462-463. Reasonable efforts to reunify a parent with a child generally include the adoption of a case services plan that is designed to rectify the conditions that led to the child's removal. *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005).

Respondent-mother's claim that petitioner failed to provide her with reasonable efforts at reunification is without merit. Petitioner provided respondent-mother with numerous services, including services for her mental health issues, and respondent-mother largely failed to take advantage of those services. Concerning services designed to address respondent-mother's

[1] The supplemental petition to terminate parental rights was based in part on MCL 712A.19b(3)(j)(likelihood of harm to the child if returned to the parent), and the trial court's ruling plainly and unambiguously encompassed a finding that § 19b(3)(j) had been established with respect to respondent-mother. However, respondent-mother fails to acknowledge and address § 19b(3)(j), which in itself would support affirmance in regard to the statutory grounds for termination.

mental health issues, petitioner arranged for respondent-mother to participate in counseling sessions; however, respondent-mother's attendance at these sessions was sporadic and the sessions were ultimately discontinued as a result. Additionally, although there is some testimony in the record that respondent-mother had difficulty obtaining her bipolar medication because of insurance issues, the record further reveals that respondent-mother's inability to obtain her medication was also the result of her own actions. For instance, the foster care worker assigned to this case testified that respondent-mother's prescription would not be refilled if she did not attend therapy sessions. Further, respondent-mother admitted that when she had access to the medication, she did not take it as directed. Additionally, respondent-mother's actions prevented her from being able to take her medication while she was incarcerated because she hoarded the medication in violation of jail policy. Although respondent-mother objects to the characterization of her behavior as "hoarding," it is undisputed that she did not take the medication in accordance with county jail policy, and that her actions alone prevented her from being able to take the medication while she was incarcerated. In sum, while insurance issues may have operated, in part, as a barrier to respondent-mother's access to her prescription medication, respondent-mother's own actions were also to blame for her failure to take her prescription medication as required in the PATP. Thus, she fails to establish that the services provided were inadequate to rectify the conditions that led to removal, because "[w]hile the DHS has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012).

Lastly, respondent-mother argues that the trial court's best interests determination was clearly erroneous.[2] We review the entire record to determine whether the trial court clearly erred in making its best interests determination. *In re LE*, 278 Mich App 1, 25; 747 NW2d 883 (2008). Based on the entire record, the trial court's best interests determination was not clearly erroneous. Although respondent-mother participated in some services designed to reunify her with her child, she failed to participate in many of the reunification services made available to her. More importantly, when she did participate in services, she failed to benefit, particularly in the areas of her mental health, substance abuse, and parenting skills. Respondent-mother's failings in these areas demonstrated that she could not effectively parent the minor child. Furthermore, there is evidence on the record that the minor child needed a permanent home and

[2] More specifically, respondent-mother argues that "[t]he trial court erred in determining that termination of [respondent-mother's] rights to her child was not clearly contrary to the child's best interests." Prior to the enactment of 2008 PA 199, which was made effective on July 11, 2008, MCL 712A.19b(5) required a court to order the termination of parental rights upon establishment of a ground for termination "unless the court finds that termination of parental rights to the child is clearly not in the child's best interests." This has not been the standard for nearly five years. With the enactment of 2008 PA 199, MCL 712A.19b(5) now mandates termination "[i]f the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests[.]" The trial court here properly set forth and applied this standard in its ruling, and it befuddles us to regularly examine appellate briefs making reference to the old inapplicable standard.

that respondent-mother was not in a position to offer such a home. Although respondent-mother loves her child, her inability to address the barriers to reunification demonstrates that the trial court's best interests determination was not clearly erroneous. *In re Frey*, 297 Mich App at 248-249; *In re CR*, 250 Mich App 185, 196-197; 646 NW2d 506 (2002).

Affirmed.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra